

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NOS.152, 154 & 155 OF 2014 AND

CRIMINAL APPEAL NO.148 OF 2015

*(An Appeal arising out of the conviction and sentence of Hon. Hannah Ndungu (Ms.) - CM delivered on 8th October 2014 in Nairobi
CMC. CR. Case No.1562 of 2012)*

ANN WAMBUI NJERI.....1ST APPELLANT

ANN NYAMBURA WAMBUI.....2ND APPELLANT

PURITY MUTHONI RANJI.....3RD APPELLANT

RAPHAEL NDERITU MAINA.....4TH APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellants, Ann Wambui Njeri, Ann Nyambura Wambui, Purity Muthoni Ranji and Raphael Nderitu Maina were convicted of five (5) counts under the **Penal Code**. The charges arose from the kidnapping of a child and the subsequent demand for ransom that was made. The Appellants were convicted on 8th October 2014 and were ordered to serve various custodial sentences ranging from two (2) years imprisonment to seven (7) years imprisonment. The sentences were ordered to run concurrently.

Although the Appellants were aggrieved by their conviction and sentence, during the hearing of the appeal, they abandoned their appeals against conviction and instead pleaded with the court for reduction of sentence. The Appellants told the court that during their period of incarceration, they had learnt their lesson. They were seeking forgiveness from the court and from God. They had reformed in the period that they have been in prison. From the documents presented to court, some of the Appellants had taken the opportunity offered by their imprisonment to complete their primary education studies. They urged the court to exercise leniency on them. They undertook to live a crime free lives in the event that the court shall sentence them to serve either a non-custodial sentence or commute their sentences to the period served.

Ms. Kimiri for the State opposed the application for reduction of sentence. She submitted that the Appellants face serious charges. The custodial sentences that were imposed fitted the crime. She urged the court not to be persuaded by the Appellants' entreaties because the court ought to take into account the crime that the Appellants committed. In the premises therefore, she urged the court to dismiss the Appellants' plea for reduction of sentence.

When the trial magistrate sentenced the Appellants to serve custodial sentence, it was exercising judicial discretion. This court can only interfere with such exercise of discretion if it is established, either that the sentence was too harsh or too lenient in the circumstances. The court will also interfere with the imposition of custodial sentence if it is established that the trial magistrate applied the wrong principles of the law in sentencing the Appellants or that the sentence was illegal. In the present appeal, it was clear to this court that the trial court sentenced the Appellants to serve legal custodial sentences. This court can only guess the trauma and distress that the parents of the child who was kidnapped must have faced when the Appellants unlawfully took custody of the child. That being the case, this court inclination was to decline the Appellants' plea for reduction of sentence. However, this court was persuaded by the reports filed by the Prison authorities in relation to the change of behaviour and transformation that the Appellants have undergone during their period of incarceration.

In the premises therefore, this court is of the view that the Appellants have been sufficiently punished in the period that they have served custodial sentence. They have learnt their lesson. By all indications, they are remorseful and may not be repeat offenders if they are released from prison. The custodial sentences that each Appellant was sentenced to serve is hereby commuted to the period served. Each Appellant is ordered set at liberty forthwith and released from prison unless otherwise lawfully held. It is so ordered.

DATED AT NAIROBI THIS 20TH DAY OF FEBRUARY 2018

L. KIMARU

JUDGE